

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY ACTION NO. 09-AH- 70

In the matter of

Prosper Marketplace, Inc.

Respondent.

ADMINISTRATIVE CONSENT ORDER

WHEREAS, the Department of Financial Institutions ("DFI") conducted an investigation of Prosper Marketplace, Inc. ("Prosper") and determined that Prosper has offered and sold securities as defined in KRS 292.310(18); and

WHEREAS, a number of state regulators coordinated investigations into Prosper's activities in connection with unregistered securities offered and sold between 2006 and October 2008; and

WHEREAS, Prosper has cooperated with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and halting further offers and sales until the securities are appropriately registered; and

WHEREAS, Prosper, as part of this settlement agrees to appropriately register its securities with the DFI before making further offers or soliciting sales, and to make certain payments; and

WHEREAS, Prosper neither admits nor denies the Findings of Fact and Conclusions of Law, but has agreed to resolve the investigations relating to its offers and sales of unregistered securities through this Administrative Consent Order (the "Order") in order to avoid protracted and expensive proceedings in numerous states; and

WHEREAS, Prosper, as evidenced by the authorized signature on the consent to the Order below, admits the jurisdiction of the DFI, voluntarily consents to the entry of this Order and elects to permanently waive any right to a hearing and appeal under KRS 292.470 and KRS 292.490 with

1 respect to this Order;

2 NOW, THEREFORE, the DFI, as administrator of the KRS Chapter 292 (the Kentucky
3 Securities Act) (the "Act"), hereby enters this Order:

4 **FINDINGS OF FACT**

5 **Part 1: Respondent Licensing/Registration History**

6 1. Prosper is a Delaware corporation (Delaware Division of Corporations #3943799) that was
7 incorporated on March 22, 2005. Its principal place of business is located at 111 Sutter Street, 22nd
8 Floor, San Francisco, California 94104. Prosper is not registered as a foreign business corporation
9 in Kentucky with the Kentucky Secretary of State. However, since February 2006 Prosper has held
10 itself out, through its Internet website, www.prosper.com, as an online marketplace for "person to
11 person" lending.

12 2. Prosper has been licensed as a California finance lender (license #605-3227) since
13 December 19, 2005. However, Prosper is not licensed as a consumer loan company in Kentucky as
14 required by under KRS Chapter 286.4, which is required to the extent Prosper were to make loans
15 of \$15,000 or less to Kentucky residents at a greater rate of interest than permitted under KRS
16 Chapter 360. In any event, a consumer finance license does not authorize a licensee to sell
17 securities to Kentucky residents.

18 3. Prosper submitted an application to register securities in Kentucky on November 7, 2007.
19 Pursuant to KRS 292.390 the DFI issued a Stop Order suspending the effectiveness of the
20 registration statement submitted by Prosper. Pursuant to an Agreed Order entered June 20, 2008,
21 Prosper withdrew its application without prejudice to its right to submit another application in the
22 future. As of the date of this Administrative Consent Order, Prosper does not yet have an active
23 securities registration in Kentucky.

24 **Part 2: Prosper Product Prior to October 16, 2008**

25 4. Prosper's lending platform functioned like a double-blind auction, connecting individuals
26 who wish to borrow money, or "borrowers," with individuals or institutions who wish to commit to

1 purchase loans extended to borrowers, referred to on the platform as "lenders." Lenders and
2 borrowers registered on the website and created Prosper identities. They were prohibited from
3 disclosing their actual identities anywhere on the Prosper website.

4 5. Borrowers requested three-year, fixed rate, unsecured loans in amounts between \$1,000 and
5 \$25,000 by posting "listings" on the platform indicating the amount they wanted to borrow and the
6 maximum interest rate they were willing to pay. Prosper assigned borrowers a credit grade based
7 on a commercial credit score obtained from a credit bureau, but Prosper did not verify personal
8 information, such as employment and income.

9 6. Potential lenders bid on funding all or portions of loans at specified interest rates, which
10 were typically higher than rates available from depository accounts at financial institutions. Each
11 loan was usually funded with bids by multiple lenders. After an auction closed and a loan was fully
12 bid upon, the borrower received the requested loan with the interest rate set by Prosper and
13 determined by the auction bidding at the lowest rate acceptable to all winning bidders.

14 7. Individual lenders did not lend money directly to the borrower; rather, the borrower
15 received a loan from a bank with which Prosper has contracted. (Prior to April of 2008, loans were
16 made directly by Prosper.) The interests in that loan were then sold and assigned through Prosper
17 to the lenders, with each lender receiving an individual non-recourse promissory note.

18 8. Since the inception of its platform in January 2006, Prosper has initiated approximately
19 \$174 million in loans nationwide. Prosper collected an origination fee from each borrower of one
20 to three percent of loan proceeds, and collected servicing fees from each lender from loan
21 payments at an annual rate of one percent of the outstanding principal balance of the notes.

22 9. Prosper administered the collection of loan payments from the borrower and the distribution
23 of such payments to the lenders. Prosper also initiated collection of past due loans from borrowers
24 and assigned delinquent loan accounts to collection agencies. Lenders and borrowers were
25 prohibited from transacting directly and were unable to learn each others' true identities.

26 10. Prosper voluntarily suspended all offers and sales of securities on October 16, 2008.

1 11. 10,843 notes were purchased by approximately 294 Kentucky residents prior to the
2 suspension of sales on October 16, 2008, resulting in loans financed through Prosper totaling
3 \$855,517.10.

4 **Part 3: Prosper's Omissions in Connection with Sales to Investors**

5 12. Prosper provided information to lenders concerning the issues noted below, although it
6 did not provide the information in the manner typically required of a securities
7 registrant regarding: details of the company's business model; biographical information about the
8 background and experience of Prosper's management; certain risk factors in connection with the
9 purchase of a Prosper facilitated note, including the fact that the notes were speculative
10 investments; significant financial risks that investors may be subjected to when investing in the
11 Prosper notes that could result in a complete loss of their investment, such as the fact that
12 borrowers may not fulfill their obligations to make payments for reasons of death or incapacity,
13 bankruptcy, or inability to pay; information concerning Prosper's status as a development stage
14 company with a limited operating history; and the possibility that Prosper could cease operations at
15 any time due to the failure to raise additional capital, because of a lack of profitability, or because
16 of regulatory concerns.
17

18 13. The Prosper website, the company's exclusive mode of dissemination of information to
19 prospective investors, did not contain financial statements for Prosper, did not disclose that the
20 notes were not registered with the DFI, and that Prosper might have significant contingent liability
21 for the offer and sale of unregistered securities.
22

23 **CONCLUSIONS OF LAW**

24 1. The "notes" sold by Prosper to Kentucky residents are securities, as defined by KRS
25 292.310(18).
26

2. Prosper sold securities that were not registered with the DFI in violation of KRS 292.340.

1 3. In connection with the offer or sale of a security to Kentucky residents, Prosper
2 either failed to include information or failed to describe in the manner typically required of a
3 securities registrant certain business or loan information including investment risk factors, that
4 would have aided investors, or prospective investors in making an objective decision on whether
5 to invest in the Prosper notes in violation of KRS 292.440.
6

7 **ORDER**

8 **IT IS HEREBY ORDERED:**

9 1. Prosper will CEASE AND DESIST from offering and/or selling securities to persons in or
10 from Kentucky in violation of the KRS Chapter 292 (The Kentucky Securities Act) and will comply
11 with the Act.

12 2. Prosper shall pay the sum of Four Thousand Seven Hundred Seventy Six Dollars
13 (\$4,776.00) payable to the "IPT Kentucky State Account." Payment shall be delivered to the
14 Investor Protection Trust, ATTN: Don Blandon, IPT, Suite 300, 919 Eighteenth Street NW,
15 Washington, D.C. 20006-5517 within ten (10) days of entry of this Order with a copy of the
16 payment draft simultaneously transmitted to the Kentucky Department of Financial Institutions,
17 ATTN: William Owsley, Department of Financial Institutions, 1025 Capital Center Drive, Suite
18 200, Frankfort, KY 40601.

19 3. In the event another state securities regulator determines not to accept Prosper's state
20 settlement offer, the total amount of the Kentucky payment shall not be affected, and shall remain
21 at \$4,776.

22 4. This Order concludes the investigation by the DFI and any other action that the DFI could
23 commence under applicable Kentucky law on behalf of the Commonwealth of Kentucky as it relates
24 to Prosper, up to and including any activity through November 24, 2008; provided however, that
25 excluded from and not covered by paragraph 1 in this section are any claims by the DFI arising
26 from or relating to the provisions contained in this Administrative Consent Order. In addition, this
Order shall not preclude the DFI from commencing any further future investigation of Prosper in

1 the event that it files another application to sell securities in Kentucky or seeks to obtain a license
2 as a consumer loan company in Kentucky pursuant to KRS Chapter 286.4.

3 5. This Order is entered into solely for the purpose of resolving the referenced multistate
4 investigation, and is not intended to be used for any other purpose, and its findings and conclusions
5 shall not constitute admissions on the part of Prosper for any purpose.

6 6. If payment is not made by Prosper, or if Prosper defaults in any of its obligations set forth
7 in this Order, the DFI may vacate this Order, at its sole discretion, upon 10 days notice to Prosper
8 and without opportunity for administrative hearing, and commence a separate action.

9 7. For any person or entity not a party to this Order, this Order does not limit or create any
10 private rights or remedies against Prosper, does not limit or create liability of Prosper, or limit or
11 create defenses of Prosper to any claims.

12 8. Nothing herein shall preclude the Commonwealth of Kentucky, its departments, agencies,
13 boards, commissions, authorities, political subdivisions and corporations, other than the DFI and only
14 to the extent set forth in paragraph 1 in this section, (collectively, "State Entities") and the officers,
15 agents or employees of State Entities from asserting any claims, causes of action, or applications for
16 compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief
17 against Prosper in connection with unregistered securities sales.

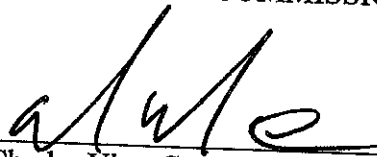
18 9. This Order and any dispute related thereto shall be construed and enforced in accordance
19 with, and governed by, the laws of the Commonwealth of Kentucky without regard to any choice
20 of law principles.

21 10. This Order shall be binding upon Prosper and its successors and assigns as well as to
22 successors and assigns of relevant affiliates with respect to all conduct subject to the provisions
23 above and all future obligations, responsibilities, undertakings, commitments, limitations,
24 restrictions, events, and conditions. Prosper further agrees that in consideration of this Consent
25 Order, Prosper, its administrators, successors and assigns, hereby releases and forever discharges
26 the Commonwealth of Kentucky, Department of Financial Institutions, Office of Legal Services,

1 and each of their members, agents, and employees in their individual capacities, from any and all
2 manner of actions, causes of action, suits, debts, judgments, executions, claims and demands
3 whatsoever, known and unknown, in law or equity, that the Respondent ever had, now has, may
4 have or claim to have against any or all of the persons or entities named in this paragraph arising
5 out of or by reason on this investigation, this disciplinary action, this settlement or its
6 administration.

7 Dated this 9 day of October, 2009.

8
9 BY ORDER OF THE COMMISSIONER

10
11 

12 Charles Vice, Commissioner
13 Department of Financial Institutions

14 Ambrose Wilson II, Deputy
15 on behalf of
16 Charles A. Vice
17
18
19
20
21
22
23
24
25
26

1 **CORPORATE CONSENT TO ENTRY OF ORDER FOR**
2 **PROSPER MARKETPLACE, INC.**

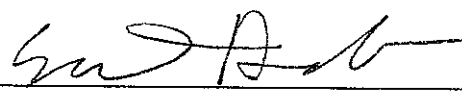
3 I, Sachin Adarkar, state that I am an officer of Prosper Marketplace, Inc. and I am authorized to act
4 on its behalf; that I have read the foregoing Order and that I know and fully understand the contents
5 hereof; that Prosper Marketplace, Inc. voluntarily consents to the entry of this Order without any
6 force or duress, expressly waiving any right to a hearing in this matter; that Prosper Marketplace,
7 Inc. understands that the [agency] reserves the right to take further actions to enforce this Order or
8 to take appropriate action upon discovery of other violations of the [relevant statute] by Prosper
9 Marketplace Inc.; and that Prosper Marketplace, Inc. will fully comply with the terms and
10 conditions stated herein. Prosper Marketplace, Inc. agrees that it shall not claim, assert, or apply for
11 a tax deduction or tax credit with regard to any state, federal or local tax for any administrative
12 monetary penalty that shall pay pursuant to this Order.
13

14
15 Prosper Marketplace Inc. understands that this order is a public record document.
16

17
18 Prosper Marketplace Inc. has been represented by counsel of its choosing in connection with
19 the resolution of this matter, specifically, Randall J. Fons, Partner, Morrison & Forster LLP.
20

21 Dated this 7th day of October, 2009.
22

23 Prosper Marketplace, Inc.

24 By: 
25 Title: Secretary
26